

INTERVIEW SUMMARY

Undersigned attorney Maria Comninou wishes to thank Examiner Michael Apanius for the courtesy of a telephone Interview on October 17, 2006. During the Interview, proposed amendments to independent claims 1, 17, and 21 were discussed. Agreement was reached that the proposed amendments would overcome the art cited in the Office Action.

REMARKS

Claims 1-3, 6-22, 24, and 25 are now pending in the application. Claims 4 and 5 were cancelled without prejudice regarding their subject matter. Minor non-narrowing amendments have been made to the specification and claims to simply overcome the objections to the specification and rejections of the claims under 35 U.S.C. § 112. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

SPECIFICATION

The specification stands objected to for certain informalities. Applicants have amended the specification according to the Examiner's suggestions. Therefore, reconsideration and withdrawal of this objection is respectfully requested.

CLAIM OBJECTIONS

Claims 2, 10, 12-14, and 20-22 are objected to because of certain informalities, specifically regarding inconsistent terminology. Applicants have amended claims 2, 10, 12, 20 and 21 according to the Examiner's suggestions. Therefore, reconsideration and withdrawal of this objection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

Claims 17, 20, 21, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Katz (U.S. Pat. No. 6,077,270). This rejection is respectfully traversed.

Regarding independent claim 17, Katz al fails to disclose, inter alia, a base being spaced apart from the rod, and a body having a lower surface slidably mounted on the base, the body having an aperture slidably receiving the rod, the body slidably contacting both the rod and the base and moveable relative to the block in a medial-lateral direction. Indeed, the Office Action concedes that in Katz "the body is slidably mounted on the rod, which in turn means that the body is slidably mounted on the base because the rod is attached to the base". Therefore Katz fails to disclose that the body is separately slidable on both the rod and the base.

Regarding independent claim 21, Katz fails to disclose, inter alia, sliding a lower surface of the body along an upper surface of the base selectively in the medial-lateral direction.

Claim 20 depends from claim 17 and claim 24 depends from claim 21.

At least for these reasons, claims 17, 20, 21, and 24 are not anticipated by Katz et al. Reconsideration and withdrawal of this rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-4, 9, 10, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Katz in view of Axelson, Jr. et al. (U.S. Pat. No. 6,558,391). This rejection is respectfully traversed.

At the outset Applicants disagree that Katz is combinable with Axelson et al without the benefit of impermissible hindsight, and reserve the right to present detailed arguments at a later date, if necessary.

Even if Katz is properly combinable with Axelson et al, the resulting combination fails to disclose all the elements of claims 1-4, 9, 10, 18, and 19.

Regarding claim 1 and its dependent claims 2, 3, 9, 10, Katz in view of Axelson et al, fail to disclose the combination of elements recited in claim 1 and including, inter alia, a block having a base spaced apart from the rod, a body having a longitudinal bore, the body having a lower surface slidably contacting an upper surface of the base of the block, and a stylus having a shaft coupled to the longitudinal bore of the body.

Claim 4 was cancelled without prejudice regarding its subject matter.

Claims 18 and 19 ultimately depend from independent claim 17, which is not anticipated by Katz, as discussed above. Axelson et al fails to provide the elements of claim 17 that are not disclosed in Katz. Furthermore, the particular elements of Axelson et al identified in the Office Action as combinable regarding claims 18 and 19 belong to a structure that cannot be combined with Katz without considerable modifications that can only be motivated by hindsight and without destroying the functionality of the device disclosed by Katz.

Claims 5-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Katz as modified by of Axelson, Jr. et al, as applied to claims 1-4, 9, 10, 18, and 19, and further in view of D'Antonio (U.S. Pat. No. 5,810,831). This rejection is respectfully traversed.

Claim 5 was cancelled without prejudice regarding its subject matter.

Claims 6-8 ultimately depend from independent claim 1, which is patentable over Katz in view of Axelson et al, as discussed above. D'Antonio, even if combinable with

Katz and Axelson et al, fails to provide all the elements of claims 6-8. Further, D'Antonio cannot be combined with Katz to provide the elements of claims 7 and 8 which require a window opening through which a portion of the shaft of the stylus is visible, because Katz requires two scales adjacent to each other on two separate portions 210 and 208 of the femoral sizer for measuring intermediate sizes, as shown in FIG. 21. Such arrangement is incompatible with the window disclosed by D'Antonio.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Katz in view of D'Antonio. This rejection is respectfully traversed.

Claim 22 depends from independent claim 21, which is not anticipated by Katz, as discussed above. Assuming, arguendo, that Katz and D'Antonio are combinable, the combination still fails to provide all the elements of independent claim 17. Further, D'Antonio cannot be combined with Katz to provide the indicator that may be observed through the window of the body, as recited by claim 22, because Katz requires two scales adjacent to each other on two separate portions 210 and 208 of the femoral sizer for measuring intermediate sizes, as shown in FIG. 21.

ALLOWABLE SUBJECT MATTER

Claims 11, 15, 16 and 25 were allowed. Objected to claims 12-14 were amended per Examiner's recommendation and are in condition for allowance.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request

that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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